

O-11-16

ORDINANCE AMENDING TITLE 7, CHAPTER 6 OF CODE OF ORDINANCES
(Restaurant and Retail Food Establishments)

Introduced by Mayor Merkes as Recommended by Administration Committee

The Common Council of the City of Menasha does hereby ordain as follows:

SECTION 1: Amend Title 7, Chapter 6 of the Code of Ordinances of the City of Menasha, Wisconsin as follows:

TITLE 7 – LICENSING AND REGULATION

CHAPTER 6

Retail Food Safety and Recreational Licensing

**SEC. 7-6-1 ~~RESTAURANTS, RECREATIONAL AND FOOD ESTABLISHMENT~~
RETAIL FOOD,
RECREATIONAL LICENSING AND REGISTRATION**

- (a) **PERMITS AND LICENSES REQUIRED.** Upon the authority and scope of Chapters 97, 101 and ~~75~~ 254 of the Wisconsin State Statutes, this regulation adopts by reference ~~Chapters DHS 172, 175, 178, 195, 196, 197 and 198, ATCP 75 and Comm 26, Wisconsin Food Code (Wisconsin Administrative Code Annex) and the most current edition of the FDA Food Code and Appendices.~~ Wisconsin Administrative Code Sections ATCP 72 Hotels, Motels and Tourist Rooming Houses, ATCP 73 Bed and Breakfast, ATCP 74 Designation of Agents, ATCP 76 Swimming Pools and Water Attractions, ATCP 78 Recreational Educational Camps, ATCP 79 Campgrounds and ATCP 75 Retail Food and Appendices (Wisconsin Food Code), SPS 326 Regulation of Manufactured Home Communities and the most recent edition of the United States Food and Drug Administration (FDA) Food Code and appendices.
- (b) **RETAIL FOOD ESTABLISHMENTS AND RECREATIONAL ESTABLISHMENTS**
- (1) No person shall conduct a business of or operate a retail food or recreational establishment without obtaining a license therefor from the Menasha Health Department.
 - (2) Retail Food Establishment shall mean an operation that stores, prepares, ~~serves,~~ vends, sells or otherwise provides food for human consumption based on a fee. Retail Food establishment ~~includes~~ refers to restaurants, mobile restaurants, temporary restaurants, ~~taverns,~~ vending and retail food establishments as defined ~~in s. 254 Stats. by Wisconsin Administrative Code, Section ATCP 75.~~
 - (3) Recreational Establishment includes all swimming pools and ~~basins~~ water attractions covered by Wisconsin Administrative Code, ~~DHS 172, Tattoo and body piercing establishments as cited by Wisconsin Administrative Code DHS 173, Hotels and Motels as cited by Wisconsin Administrative Code DHS 195, Bed and Breakfast establishments as cited by Wisconsin Administrative Code~~

~~DHS 197, Recreational and Educational Camps as cited by Wisconsin Administrative Code DHS 175, and Campgrounds as cited under Wisconsin Administrative Code DHS 178. Section ATCP 76, ATCP 72 Hotels, Motels and Tourist Rooming Houses, ATCP 73 Bed and Breakfast, ATCP 78 Recreational Educational Camps, ATCP 79 Campgrounds and ATCP 75 Retail Food and Appendices (Wisconsin Food Code), SPS 326 Regulation of Manufactured Home Communities and the most recent edition of the FDA Food Code and appendices.~~

(c) **APPLICATION FOR LICENSES**

- (1) Applications for ~~a license~~ all licenses shall be made upon such forms supplied and prescribed by the Menasha Health Department.
- (2) Prior to approval of an application for a license, the Menasha Health Department shall inspect the retail food establishment or recreational establishment to determine compliance with this regulation.
- (3) The fee for licenses required by this regulation shall be payable before the issuance of a license and annually before July 1 ~~of each~~ every year. An additional penalty fee shall be ~~required whenever the annual renewal fee is not paid prior to July 1 of each year.~~ assessed for license renewals received on or after July 1. Applications post marked before July 1 shall be accepted regardless of the date of receipt.
- (4) A pre-inspection fee shall be collected at the time of application from an operator of a new retail food ~~public facility~~ or recreational establishment ~~or food establishment~~ or a new operator of an existing ~~public facility or recreational establishment and food establishment~~ at change of operator.

(d) **REGISTRATION AND LICENSE ISSUANCE AND REQUIREMENTS.**

- (1) License Issuance
 - a. No person shall operate a retail food establishment, ~~public facility~~ or recreational establishment covered ~~in~~ by this regulation within the City of Menasha who does not have a valid license issued by the Menasha Health Department and/or the Wisconsin Department of Agriculture, Trade and Consumer Protection (WDATCP), unless otherwise exempted ~~in this regulation.~~
 - b. ~~A license issued by the Wisconsin Department of Health Services, Wisconsin Department of Agriculture, Trade, and Consumer Protection or one of their agents for a Mobile Restaurant or Mobile Retail Food establishment shall be honored and considered in compliance with 7-6-1(d)(1)(a). However, no person shall operate a Mobile Restaurant or Mobile Retail Food establishment within the City of Menasha who is not registered with the Health Department on such form supplied and prescribed by the Health Department.~~ City of Menasha Health Department shall only issue a license to mobile or temporary food establishments who operate solely within the City limits of Menasha. All other mobile food establishments and temporary establishments shall be licensed by the WDATCP. If the mobile food establishment service base is within the City limits of Menasha the Menasha Health Department shall license that service base.

- c. Only a person who complies with the requirements of this regulation shall be entitled to receive or retain such a license.
 - d. Licenses are non-transferable unless ~~between members of the immediate family~~ it is the spouse of the current license holder.
 - e. A valid license shall be posted in plain ~~public~~ view in every retail food establishment or recreational establishment as required ~~by~~ in this ordinance.
 - f. At least one employee responsible for food safety shall be certified as a food manager through the State of Wisconsin as evidenced by a current license with ID# and expiration date. A Person in Charge (PIC) shall be designated at all times during hours of operation. Provided there is one certified food manager the alternate employees designated as PIC are not required to be certified by the State of Wisconsin.
 - g. Retail food establishments and Recreational establishments shall only be issued a license if the property taxes for that establishment are current as evidenced by the Calumet or Winnebago County Treasurer.
- (2) License Requirements. The City of Menasha Common Council shall establish all fees related to licensing facilities and/or establishments covered by this ordinance.
- (3) INSPECTIONS
- (a) Inspection Frequency. An inspection of licensed facilities under the scope of this ordinance shall be performed at least once per year. All retail food establishments shall be assigned a risk category and inspected at a frequency as recommended by the FDA Voluntary Retail Program Standards. Inspection frequency of Retail Food establishments shall be based on risk category where complex establishments and establishments with a history of chronic priority violations shall be prioritized for inspections over the 1 annual inspection as required by the WDATCP agent contract.
 - (b) Report of Inspections. Whenever an inspection of a retail food facility or recreational establishment is ~~made, conducted~~ the findings shall be entered recorded on an inspection report form into the HealthSpace program. The inspection report form shall summarize the requirement of this regulation. The inspection shall include observations and violations to this ordinance. A copy of the completed inspection ~~report form~~ shall be left furnished to the holder of the License, or his/her agent in charge of the facility or establishment, with the PIC and a copy shall be provided to the Licensee at the conclusion of the inspection. An acknowledge email of the report shall be considered acceptable receipt.
 - (c) Correction of Violations. The completed inspection report ~~form~~ shall specify a reasonable amount ~~period~~ of time for the correction of the violations found during the inspection. Inspector shall make every reasonable attempt to have risk factor violations corrected during the inspection. Correction of the violations shall be accomplished within the ~~period specified.~~ It shall be the expectation that violations will be corrected during the inspection when possible at the discretion of the Sanitarian.

- (d) Access. ~~Representatives of the Department Sanitarian~~, after providing proper identification, shall be permitted to enter ~~any facility~~ the retail food establishment or recreational establishment at any reasonable time to determine compliance with this regulation.
- (e) Hours of Inspection. Inspections shall be made during the regular operating hours of the establishment and primarily during the regular office hours of the Menasha Health Department (8:00 a.m. – 4:00 p.m. Monday – Friday), unless circumstances necessitate conducting an inspection at a time other than normal Health Department business operating hours. ~~In the case of temporary licenses, an inspection will be made coinciding with the hours of operation, i.e. the Sanitarian will be available for an evening or weekend inspection to determine compliance with the regulations. In the event a mobile or temporary permit is issued to an operator conducting business only within the City of Menasha and inspection shall be done in conjunction with the event including weekends or evenings.~~
- (4) LICENSE DENIAL. Licenses issued under this Section may be denied by the ~~Health Officer~~ Department Sanitarian upon annual application for renewal for continued violations of this Code ~~of the applicable provisions of payment of re-inspection fees issued in the prior license year are received.~~ as it relates to payment for re-inspection fees levied in the previous license year or delinquent property taxes for that business address.
- (5) REINSTATEMENT OF LICENSE. The licensee of any establishment addressed in this Section whose license has been suspended may, at any time, make application for the reinstatement of the license within three (3) business days of the receipt of a written application accompanied by a written statement signed by the applicant to the effect that all violations have been corrected. ~~The Health Officer, or his/her designee, Sanitarian shall make conduct~~ a re-inspection to determine whether all if violations have been corrected and if the findings of the inspection indicate compliance, the license may be reinstated. The license may be reinstated pending payment of any re-inspection fees which may have been levied on the establishment.
- (6) LICENSE REVOCATION. Licenses issued under this Section may be revoked after an opportunity for hearing by the ~~Health Officer~~ Menasha Board of Health. ~~The Health Officer~~ Board of Health may determine that the license revocation is necessary if a license is suspended twice in any two (2) year period or if the health violations ~~are of a nature as to have caused~~ resulted in serious injury or illness to person(s).
- (7) APPEAL. Whenever a license is suspended or revoked, the person to which the license ~~was~~ is issued shall be afforded the opportunity of a hearing before the Common Council within fifteen (15) days of the receipt of a written request for such hearing, unless both parties agree to a later date. Opportunity for a hearing before the Common Council will be provided if the written request is submitted by the person issued the license and received by the Health Department within ten (10) days of the suspension or revocation.

- (8) **REQUIREMENTS AND FEES.** The application for license or the request for renewal of license or registration covered in this Section shall be accompanied with an appropriate fee to be established by the Common Council. A list of fees shall be maintained by the City Clerk and the Health Department.
- (a) Any establishment required by this section to pay any fee may, in addition to any other penalties, also be required to pay a fee equal to twice the amount of the normal fee if the failure is due to a late payment, insufficient funds or account closed checks, or for any other reason the City has not received the proper payment.
- (b) Any establishment required by this section to pay any fee may, in addition to any other penalties, also be required to pay a fee equal to twice the amount of the normal fee if such establishment opens for business without paying the required fee. The Public Health Director, or designee, may also order such establishment to close until the fee is paid.

SECTION 2: This amending Ordinance shall take effect upon passage and publication as provided by law.

Passed and approved this ____ day of _____, 2016.

Donald Merkes, Mayor

ATTEST:

Deborah A. Galeazzi, City Clerk